

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,642

)

Appeal of )

)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner is a fifty-two-year-old woman with a twelfth grade education and work history as a sales clerk and factory machine operator. She has not worked since January, 1991.

The petitioner was the subject of Fair Hearing No. 10,633, decided by the board on March 26, 1992. In its decision in that case the board found the petitioner to be disabled and, thus, eligible for medicaid as of August, 1991, due to chronic headaches and back pain.

It appears that the petitioner's medicaid was terminated around September, 1992, due to financial reasons unrelated to the petitioner's disability.<sup>(1)</sup> She reapplied for medicaid in October, 1993. Without acknowledging, and probably unaware of, the board's prior decision, DDS denied the petitioner's most recent application, finding that she is capable of "light work" (see infra).

The medical evidence in the matter, however, does not show any improvement in the petitioner's overall condition over the past two years. While she has not sought specific treatment for her headaches, her back pain has remained a problem; and she has had additional psychological problems as well.

The record shows that from May through September, 1992, the petitioner received psychotherapy for a "major depressive episode" and was prescribed antidepressant medication. It further shows that she discontinued the therapy against advice because of the termination of her medicaid, even though she "continued to experience anxiety attacks on a daily basis..."

A consultative psychological examination of the petitioner performed in December, 1993, found that she suffered from "mild chronic depression", but that she "does display some psychophysiologic indicators characteristic of depression and it is probable that were she to be employed some types of accommodations would be necessary to assist her depending on the nature of the job in consideration of her back pain..."

As was the case in her previous appeal the primary treating source for the petitioner's back pain has been a chiropractor (although a different one than she was seeing previously). In near-monthly office notes dating back to May, 1992, the chiropractor diagnoses the petitioner's condition as "lumbar sprain/strain", and notes chronic and continuous aching in her neck and back that has been exacerbated from time to time by walking, exertion, and sitting too long.

In December, 1993, the petitioner underwent another consultative examination with the same internist who had examined her (also on a consultative basis) two years earlier (see pp. 3-4 of the board's prior decision). In this exam he noted that the petitioner stated that her back and neck pain were "a severe and persistent issue". His report concludes with the following assessment:

O: Weight 154 lbs. Height 4' 10 1/2". Blood Pressure 138/90.

MEDICINES: Aspirin one or two daily; Darvocet N 100; Ventolin inhaler; Dental prophylaxis.

General appearance; she has significant difficulty sitting on the examining table for even a brief period of time. Neck; there is no spinus process tenderness or muscle spasm. Range of motion is normal. Thoracic spine; nontender. Lumbar spine; tenderness in the lower lumbar spine. No paraspinus spasm. Lungs are clear. No Wheezes, rales or rhonchi. Heart, regular rhythm. No click or murmur. Abdomen, nontender. Extremities, no edema. Neurologic: Reflexes, normal. Motor, normal. Fine motor control, normal. Sensory, diminished in the dorsum of the right hand. Straight leg raising is positive bilaterally at 30 . Gait, normal. Station, normal. Toetouch; she misses her toes by a foot, flexing to 45 with increased low back pain.

A: 1. Chronic low back pain.

2. Asthma.

3. Right hand pain and numbness, probable ulnar nerve damage.

4. Depression.

If the petitioner's case was one of first impression, the lack of recent medical evidence regarding her specific physical and mental job-related limitations might be problematic. However, in light of the less-than-two-year-old determination by the board that the petitioner, as of March, 1992, was disabled, the recent medical evidence can be viewed from the standpoint of whether it shows any improvement in the petitioner's status since that time.

The above evidence clearly shows that the petitioner's back problems have continued virtually unabated. Her inability to sit for any length of time is supported by the reports of her treating chiropractor and the consultative internist. Although she has not sought treatment specific for her headaches, she has

undergone therapy, and continues to suffer from depression that would require at least some accommodation in a potential workplace.

On the basis of the above evidence it is found that the petitioner's overall medical condition has not improved since she was determined to be disabled in March, 1992. She remains unable to be on her feet, or to be able to sit, for any significant length of time. In light of this evidence, it is found that she remains unable to perform any substantial gainful activity on a regular and sustained basis.

### ORDER

The Department's decision is reversed.

### REASONS

Medicaid Manual Section M 211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The evidence in this case shows that the petitioner, who was found to be disabled in March, 1992, is in essentially the same physical condition now as she was then, and remains unable to engage in substantial gainful activity. Therefore, the Department's decision is reversed.

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1. The petitioner stated that her husband had inherited some property in Maine.